IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 479 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RITAM MADHUSUDAN THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR MEHUL SHARAD SHAH for Petitioner

Mr. H.L. Jani, APP for Respondent No. 1

UNSERVED-REFUSED (N) for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/01/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. Mehul S. Shah for the petitioner and learned A.P.P. Mr. H.L. Jani for the respondent no.1. Respondent no.2 absent though duly

served.

1. The petitioner has converted the proceedings initially lodged as Special Criminal Application into Misc. Criminal Application so as to challenge the order dated 15-9-2000 passed by the learned Addl. Sessions Judge, Mehsana, Camp at Patan in the proceedings of Criminal Revision Application no.2/98. It is averred and contended by the petitioner that the petitioner had submitted a written application to the Collector, Mehsana and Patan Nagarpallika to complain against the nuisance caused by the respondent no.2 who had started a factory in the cellar and ground floor premises of a building in front of the residential building of the petitioner. It is alleged that the respondent no.2 has taken the premises from one Babu Kanjibhai Modi situated in front of the residence of the present petitioner and other inhabitants of the locality and has started a factory for grinding chilly, turmeric powder etc. That an exhaust fan is also fixed in the cellar on account of which particles of articles being ground in the premises pollute the air of the locality causing serious discomfort and inconvenience to the family members of the petitioner and other residents of the locality. The petitioner has prayed to remove such a nuisance under the relevant provisions of law. However, said application of the petitioner was rejected by the Sub Divisional Magistrate, Patan vide order dated 11th December, 1997. That being aggrieved by the said order, the petitioner preferred Criminal Revision Application no.2/98 in the Court of Sessions Judge, Mehsana, under the provisions of Sec.397 of the Code of Criminal Procedure, 1973 ("Code" for short). That the Additional Sessions Judge, Mehsana, Camp at Patan has dismissed the said Revision vide order dated 15-9-2000 against which the present petition is filed.

2. Learned Advocate for the petitioner Shri Mehul Shah has invited my attention to the earlier order passed by the Addl. Sessions Judge in the proceedings Criminal Revision Application no.2/98 wherein the learned Addl. Sessions Judge has observed that on account of sick note, the learned Advocate for the revisional petitioner could not remain present on 28-8-2000, and thereby, the matter was adjourned. However, it is also observed in the said order that adjournment was granted so as to enable the parties to resolve the dispute amicably and the matter was adjourned to 5-9-2000. That on 5-9-2000 as the revisional petitioner could not be served with the notice for remaining personally present, notice was reissued and matter was kept on 15-9--2000.

3. That on 15-9--2000, the learned Addl. Sessions Judge has observed in the impugned order that matter was fixed to hear the parties for amicable settlement and to inspect the disputed site. However, despite the service of notice, the revisional petitioner has not remained present though respondent has remained present alongwith his Advocate. It is further observed that the absence of the revisional petitioner and his Advocate suggest that petitioners are not anxious to proceed with the proceedings. Under the circumstances, it would not be just and proper to keep the matter pending, and as such, Revision is dismissed for default with no order as to costs.

4. Learned Advocate for the petitioner has submitted, and in my opinion, rightly submitted that the nature of proceedings of Revision itself is a process to look into the record of the matter and decide the dispute on merits even if the parties are not present or available to make submission. Under the circumstances, if the Court was not inclined to adjourn the matter and to keep the matter pending, the Court should have decided the matter on merits after considering the material produced on record.

In the instant case, it appears that the Court has dismissed the Revision without considering the material produced on record and on principal consideration that absence of the petitioner and his Advocate suggest that the petitioner is not anxious to proceed with the matter. That the said approach cannot be said to be a just and reasonable approach specifically for the decision in the proceedings of Revision. Under the circumstances, ends of justice would be met if the order is quashed and set aside and the learned Addl. Sessions Judge, Mehsana is directed to restore the matter on file and decide the same in accordance with law considering the material produced on record. Hence, the following operative orders are passed:

(i) The application is allowed. The impugned order dated 15-9-2000 passed by the learned Addl. Sessions Judge, Mehsana Camp at Patan in the proceedings of Criminal Revision Application no.2/98 is hereby quashed and set aside.

(ii) The learned Addl. Sessions Judge, Mehsana, Camp at Patan is directed to restore the proceedings of Criminal

Revision Application no.2/98 on file and after issuing notice to the parties give them opportunity to be heard, decide the matter on merits in consideration of material produced on record.

Rule to the aforesaid extent is made absolute.

(A.K.Trivedi,J.)

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